

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Revision of the Commission’s Rules)	CC Docket No. 94-102
to Ensure Compatibility with Enhanced)	
911 Emergency Calling Systems)	
)	
Wireless Telecommunications Bureau)	DA 01-886
Seeks Comment on Request for)	
Clarification or Declaratory Ruling)	
Concerning Public Safety Answering)	
Point Requests for Phase II Enhanced 911)	

To: Wireless Telecommunications Bureau

COMMENTS

Cingular Wireless LLC (“Cingular”) hereby submits comments in response to the *Public Notice* of April 5, 2001 which seeks comment on a petition filed by the City of Richardson, Texas (“Richardson”) purporting to seek “clarification” that a public safety answering point (“PSAP”) can require a covered commercial mobile radio service (“CMRS”) provider to begin implementing Phase II E911 merely by notifying the carrier that the PSAP will be capable of utilizing the information at some point in the future.¹ As discussed below, no clarification is necessary — pursuant to FCC rules, a PSAP request is not valid unless the PSAP is currently able to receive and utilize Phase II E911 data. Accordingly, Richardson’s petition for clarification should be dismissed or denied as either (i) an

¹*Wireless Telecommunications Bureau Seeks Comment on Request for Clarification or Declaratory Ruling Concerning Public Safety Answering Point Requests for Phase II Enhanced 911*, CC Docket No. 94-102, *Public Notice*, DA 01-886 (April 5, 2001).

untimely petition for reconsideration pursuant to Section 405 of the Communications Act,² or (ii) an improper request to change established rules without following the procedures set forth in Section 553 of the Administrative Procedure Act.³

I. THE COMMISSION’S RULES AND ORDERS CLEARLY REQUIRE PSAPs TO BE CAPABLE OF UTILIZING PHASE II E911 DATA BEFORE A VALID REQUEST FOR THE DATA CAN BE MADE

Pursuant to Section 20.18 of the Commission’s rules, covered CMRS licensees must provide location information for 911 calls to a designated PSAP provided certain conditions are met.⁴ These conditions are set forth in Section 20.18(j) which clearly requires that a PSAP must be capable of utilizing E911 information before any carrier obligations are triggered:

The requirements set forth in . . . this section shall be applicable only if the administrator of the designated Public Safety Answering Point has requested the services required under those paragraphs *and is capable* of receiving and utilizing the data elements associated with the service, and a mechanism for recovering the Public Safety Answering Point's costs of the enhanced 911 service is in place.⁵

The Commission left no doubt that a valid PSAP request for E911 service is contingent upon the PSAP’s ability to process the information at the time the request is submitted. In the most recent order modifying this condition, the Commission states:

C “In originally conditioning the carrier’s obligation on the receipt of a request from a PSAP *with the capability to receive and utilize the information*, the Commission

²47 U.S.C. § 405.

³5 U.S.C. § 553.

⁴47 C.F.R. § 20.18.

⁵47 C.F.R. § 20.18(j).

recognized that implementation will require investment in facility and equipment upgrades *to be able to request the service.*”⁶

- ℄ “Carriers cannot fulfill their obligations, however, unless and until the States’ 911 systems are capable of receiving and utilizing the E911 information *so that PSAPs can make a valid request for the service.*”⁷
- ℄ “We retain the [PSAP cost recovery] provision to *ensure that carriers are not required to make unnecessary expenditures in response to a PSAP that is not ready to use the E911 information.* . . . Apart from the significant costs involved, because location technologies are evolving and improving in the short term and the costs of those technologies are decreasing, the public, the PSAP and the carrier benefit from *a requirement that is not triggered until the actual time at which the PSAP can take advantage of the E911 service.*”⁸
- ℄ “The funding of the PSAP is a critical component of the PSAP’s capabilities to receive and utilize the E911 data, which the E911 rules require *before the PSAP may make a valid request for service from the carrier.*”⁹
- ℄ “Carriers also would benefit from *receiving requests from PSAPs that are ready to receive the carriers’ transmissions, thereby avoiding unnecessary expenditures or investments in their networks.*”¹⁰

In sum, both the rule and the Commission’s orders make clear that a PSAP must be ready and able to use Phase II data at the time it requests the data from a covered CMRS carrier.

⁶*Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, *Second Memorandum Opinion and Order*, 14 F.C.C.R. 20850, 20877 (1999) (emphasis added).

⁷*Id.* at 20878 (emphasis added).

⁸*Id.* at 20879 (emphasis added) (footnote omitted).

⁹*Id.* at 20909 (supplemental final regulatory flexibility analysis) (emphasis added).

¹⁰*Id.* (supplemental final regulatory flexibility analysis) (emphasis added).

II. RICHARDSON'S PURPORTED "CLARIFICATION" SEEKS AN UNTIMELY AND UNLAWFUL RULE CHANGE

Because Section 20.18(j) clearly requires a PSAP to be able to utilize Phase II data at the time it submits a request for the information, Richardson seeks relief that the Commission simply cannot provide — the issuance of a clarification that would effectively alter this rule which was adopted pursuant to a notice and comment rulemaking. It is a fundamental principle of administrative law that once an agency adopts clear rules, it must adhere to those rules.¹¹ The Commission can only alter those rules by way of a timely petition for reconsideration or by commencing a new rulemaking consistent with the provisions of Section 553 of the Administrative Procedure Act.¹² Richardson's petition satisfies none of these requirements.

To the extent Richardson's petition for clarification is viewed as a petition for reconsideration, it should be dismissed as untimely.¹³ Pursuant to Section 405 of the Communications Act, a petition for reconsideration of a rule must be filed within thirty days from the date upon which public notice is given of the order adopting or modifying the rule.¹⁴ The most recent order modifying the rule containing the

¹¹*Reuters Ltd. v. FCC*, 781 F.2d 946, 950 (D.C. Cir. 1986).

¹²*See id.*; 47 U.S.C. § 405; 5 U.S.C. § 553.

¹³*See, e.g., Reuters Ltd.*, 781 F.2d at 951-52; *Nextel Communications, Inc., Order*, 13 F.C.C.R. 281, 283 (WTB 1998) (dismissing as untimely a petition that was in substance a petition for reconsideration, although not styled as such, where the petition was not filed within 30 days of date of public notice of the action complained of); *Investigation of Equal Access Rate Elements*, CC Docket No. 85-93, *Memorandum Opinion and Order*, 4 F.C.C.R. 2657, 2658 (CCB 1989) (construing a petition for clarification as an untimely petition for reconsideration and dismissing it for that reason).

¹⁴47 U.S.C. § 405.

PSAP readiness condition was placed on public notice on December 29, 1999.¹⁵ Thus, the statutory deadline for seeking reconsideration of these rules lapsed more than one year ago.

Because the period for seeking reconsideration has expired, the only other method for modifying the rule is the commencement of a rulemaking proceeding. Richardson's petition does not request such relief. Rather, Richardson seeks an immediate change in the rule that would eliminate the PSAP readiness requirement. Even if the petition could be construed as requesting the commencement of such a proceeding, Cingular would oppose such action. The PSAP readiness condition was adopted after a lengthy rulemaking process and based on a proposal jointly submitted to the Commission by three public safety organizations and CTIA.¹⁶ The Commission already affirmed the PSAP readiness condition on reconsideration¹⁷ and Richardson provides no new reason for changing the rule.

¹⁵64 Fed. Reg. 72951 (1999).

¹⁶*See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, *Report and Order*, 11 F.C.C.R. 18676, 18709 (1999) (citing joint filing of CTIA, NENA, APCO, and NASNA).

¹⁷*See Second Memorandum Opinion and Order*, 14 F.C.C.R. at 20853.

CONCLUSION

As stated above, the Commission's rules clearly define the prerequisites for a valid PSAP request for E911 services. Accordingly, clarification is unnecessary and Richardson's petition should be denied. The only way to alter these prerequisites is through a formal notice and comment rulemaking.

Respectfully submitted,

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